

## RUTH D. AND HENRY L. BRITTINGHAM

MAY 7, 1942.—Ordered to be printed

Mr. ELLENDER, from the Committee on Claims, submitted the following

## REPORT

[To accompany S. 2273]

The Committee on Claims, to whom was referred the bill (S. 2273) for the relief of Ruth D. and Henry L. Brittingham, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendments:

On page 1, line 7, strike out the figures "\$7,349.20" and insert "\$5,499.20".

On page 1, line 8, strike out the figures "\$4,500" and insert "\$3,084.40".

The bill, as amended, provides for the payment of \$5,499.20 to Ruth D. Brittingham, of Washington, D. C., and the sum of \$3,084.40 to Henry L. Brittingham, of Washington, D. C., in full settlement of all claims against the United States for personal injuries and property damage sustained by them when the automobile in which they were riding was struck by a United States Army truck on August 2, 1941, while traveling along United States Highway No. 113, near Dover, Del.

The War Department has no objection to the enactment of legislation compensating the claimants.

The records of the Department show that on August 2, 1941, at about 2:45 p. m., an Army truck on official business, operated by an enlisted man, with a noncommissioned officer as passenger, was proceeding south on United States Highway No. 113 in the State of Delaware, at a speed of about 35 miles per hour. The weather was clear and the visibility good. The road was dry, paved with concrete to a width of 20 feet, and divided into two lanes by a center line. It appears that at a point about 7 miles south of Dover, Del., the Government driver and his passenger both having fallen asleep, the truck crossed over the center of the highway into the northbound lane and crashed into an oncoming Chevrolet sedan, owned and operated by Henry L. Brittingham, of 3410 Rodman Street NW., Washington, D. C., who with Mrs. Ruth D. Brittingham (his wife) and Miss Eliza-

beth D. Wilson as passengers, was driving north at a speed of 45 to 50 miles per hour.

As a result of the accident the Government truck was extensively damaged; the Chevrolet sedan was practically demolished; Mr. Brittingham suffered fractures of both legs, four bruised ribs, cuts, and bruises; Mrs. Brittingham suffered a fractured acetabulum, right, and cuts and bruises; and Miss Wilson suffered minor abrasions and shock.

Mr. Brittingham states that as he reached a point about 300 feet from the beginning of a right curve, he saw a truck rounding the curve and coming toward him; that the truck was then on its proper side of the road but that as it neared his car it veered over onto his side; that he sounded his horn, applied his brakes, and swung his car as far as he could in the time available to him off the concrete and onto the shoulder on his right; that within 1 or 2 seconds after the truck started to swerve across the road it struck his car on the left front end. Similar testimony was given by Mrs. Brittingham and Miss Wilson.

The Government driver testified that he thought he was asleep, since he did not remember seeing the car before the accident. The noncommissioned officer who was riding in the Government vehicle testified that he also had fallen asleep.

On September 27, 1941, the Government driver was tried in the Court of Common Pleas of Kent County, at Dover, Del., for assault and battery by an automobile. He at first pleaded guilty to the charge. However, the judge stated that, in view of recent decisions to the effect that an individual who fell asleep at the wheel was not criminally responsible, because no intent to assault was proved, he believed the defendant's plea should be changed to not guilty. At the request of the prosecutor, the plea was changed to not guilty, and the judge held that the defendant was not guilty of the charge, but that he was not relieved of the civil liabilities involved. The case was then dismissed.

After careful consideration of the evidence adduced in this case, it is the view of the War Department that the injuries and property damage sustained by Mr. and Mrs. Brittingham resulted from no fault or negligence on their part but rather from the failure of the Government driver to remain awake and alert.

Evidence before your committee shows that medical and hospital expenses incidental to injuries sustained by Mrs. Brittingham amounted to \$2,999.20. To this sum your committee has added \$2,500 for personal injuries, making a total of \$5,499.20.

In the case of Mr. Brittingham your committee is recommending the payment of \$483.90 for property damage, \$1,100.50 for medical and hospital expenses, and \$1,500 for personal injuries, a total of \$3,084.40.

Further facts will be found in the following communications, which are appended hereto and made a part of this report.

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WAR DEPARTMENT,  
Washington, April 20, 1942.

HON. PRENTISS M. BROWN,  
Chairman, Committee on Claims,  
United States Senate.

DEAR SENATOR BROWN: The War Department will interpose no objection to the enactment of S. 2273, Seventy-Seventh Congress, second session, a bill which would compensate Ruth D. Brittingham and Henry L. Brittingham,

of Washington, D. C., in full settlement of all claims against the United States or personal injuries and property damage sustained by them when the automobile in which they were riding was struck by a United States Army truck on August 2, 1941, while traveling along United States Highway No. 113, near Dover, Del.

On August 2, 1941, at about 2:45 p. m., an Army truck on official business, operated by an enlisted man, with a noncommissioned officer as passenger, was proceeding south on United States Highway No. 113 in the State of Delaware, at a speed of about 35 miles per hour. The weather was clear and the visibility good. The road was dry, paved with concrete to a width of 20 feet, and divided into two lanes by a center line. It appears that at a point about 7 miles south of Dover, Del., the Government driver and his passenger both having fallen asleep, the truck crossed over the center of the highway into the north-bound lane and crashed into an oncoming Chevrolet sedan, owned and operated by Henry L. Brittingham, of 3410 Rodman Street NW., Washington, D. C., who with Mrs. Ruth D. Brittingham (his wife) and Miss Elizabeth D. Wilson as passengers, was driving north at a speed of 45 to 50 miles per hour.

As a result of the accident the Government truck was extensively damaged; the Chevrolet sedan was practically demolished; Mr. Brittingham suffered fractures of both legs, four bruised ribs, cuts, and bruises; Mrs. Brittingham suffered a fractured acetabulum, right, and cuts and bruises; and Miss Wilson suffered minor abrasions and shock. Because of its length, a report submitted by Dr. Irvine M. Flinn, Jr., of Wilmington, Del., under date of December 2, 1941, concerning the injuries sustained by the three occupants of the civilian vehicle, is enclosed herewith.

Mr. Brittingham stated that as he reached a point about 300 feet from the beginning of a right curve, he saw a truck rounding the curve and coming toward him; that the truck was then on its proper side of the road but that as it neared his car it veered over onto his (the civilian driver's) side; that he (the civilian driver) sounded his horn, applied his brakes, and swung his car as far as he could in the time available to him off the concrete and onto the shoulder on his right; that within 1 or 2 seconds after the truck started to swerve across the road it struck his car on the left front end. Substantially similar testimony was given by Mrs. Brittingham and Miss Wilson.

The Government driver testified that he thought he was asleep, since he did not remember seeing the car before the accident. The noncommissioned officer who was riding in the Government vehicle testified that he also had fallen asleep.

On September 27, 1941, the Government driver was tried in the Court of Common Pleas of Kent County, at Dover, Del., for assault and battery by an automobile. He at first pleaded guilty to the charge. However, the judge stated that, in view of recent decisions to the effect that an individual who fell asleep at the wheel was not criminally responsible, because no intent to assault was proved, he believed the defendant's plea should be changed to not guilty. At the request of the prosecutor, the plea was changed to not guilty, and the judge held that the defendant was not guilty of the charge, but that he was not relieved of the civil liabilities involved. The case was then dismissed.

A claim has been filed with the War Department by Mr. Brittingham in the amount of \$483.90 for property damages only, covering estimated damage to his car, \$435 (\$495 less \$60, amount recovered from sale of damaged car), and \$48.90, damage to glasses and other miscellaneous items of personal property. At the same time Mr. Brittingham indicated that a separate claim would be filed later for personal injuries. No information is of record in the Department as to any medical or hospital expenses incurred by Mr. and Mrs. Brittingham incident to such injuries. In view of the introduction of the bill herein under consideration, S. 2273, no action will be taken on the claim for property damage or on the claim for personal injuries if and when received.

After careful consideration of the evidence adduced in this case, it is the view of the War Department that the injuries and property damage sustained by Mr. and Mrs. Brittingham resulted from no fault or negligence on their part but rather from the failure of the Government driver to remain awake and alert. Therefore, while not prepared to pass upon the amounts that should be allowed them under the circumstances, the Department will interpose no objection to the enactment of legislation compensating Mr. and Mrs. Brittingham for such personal injuries and property damage in such amounts as the Congress in its discretion may deem proper.

Sincerely yours,

HENRY L. STIMSON, *Secretary of War.*

Enclosure: Copy of letter, 12/2/41.



DECEMBER 2, 1941.

Capt. FRANCIS H. ROEMER,  
*Twenty-first Coast Artillery,  
Fort Du Pont, Del.*

DEAR SIR: Following is a medical report on the accident which occurred between a car driven by Mr. H. Lawrence Brittingham of 3410 Rodman Street, Washington, D. C., and an Army truck driven by Private Johnson stationed at Fort Du Pont. Riding in the car with Mr. Brittingham were Mrs. Ruth Brittingham, his wife, and Miss Elizabeth Wilson of Baltimore, Md. I first saw the three occupants of the Brittingham car on arrival at Dover at approximately 6 p. m., August 2, the day of the accident.

Mr. Brittingham was lying on a stretcher with a bad circular cut over the left eye which had been sutured by Dr. Mercer of Dover. There was another deep glass wound just below the olecranon at the left elbow which was, likewise, sutured by Dr. Mercer. There were abrasions over both knees and bruises over the lower four ribs on the left in the axillary line. X-ray revealed a comminuted fracture over the table of the left tibia and extending downward for 2 inches into the shaft. This presented the form of a mosaic with many small fragments. Fortunately, there was only very slight displacement upward and inward of the larger fragment so that the joint line was fairly good. The fracture of course went definitely through into the knee joint and it was swollen and filled with blood. A cast was applied from the upper thigh to and including the toes. On the right leg, an X-ray revealed a chip fracture of the adductor tubercle of the femur and a fracture at the head of the fibula. Mr. Brittingham complained of some numbness in the outer border of foot for some time and this can definitely be attributed to the latter fracture. A small cast was applied from mid thigh to below calf on the right leg. The patient was apparently completely unconscious until he reached the hospital and even then he would occasionally lapse into periods of unconsciousness. This kept on for a period of approximately 3 days after which he began to become mentally clear. His progress was uneventful and at the end of 4 weeks the cast on the right leg was removed and, at the present time, there is perfectly normal motion present. He still complains of slight loss of sensation along the outer border of his right foot. After 6 weeks the cast on left leg was bivalved and gentle motion begun in the knee. At 8 weeks cast was completely removed. X-ray showed definite union of fragments and he began to walk about on crutches bearing slight weight on foot. At 10 weeks almost full weight bearing was begun and at 12 weeks he was walking about without any support except a cane. There is some swelling in knee joint, but this was improving gradually.

Now at this time, 4 months after the accident, patient can walk about without support. There is motion from  $180^{\circ}$  to  $70^{\circ}$  in the knee joint and other than becoming tired, condition is quite satisfactory. He has been working for the past month and can now stand about 5 hours' steady work. After the end of 5 hours, he becomes as much mentally fatigued as physically. Mr. Brittingham is vice president of the Union Iron Works and in that capacity has to be extremely mentally alert. My feeling at present is that after a period of 3 or 4 months more Mr. Brittingham will be practically recovered.

I saw Mrs. Ruth Brittingham at the same time as Mr. Brittingham. She was lying on the X-ray table in extreme pain complaining of trouble with her right hip. Any motion at all caused severe discomfort and an X-ray revealed a dislocation of the head of the femur and a fracture through the acetabulum with a slight displacement inward of the upper half of the acetabulum. She sustained, in addition, many abrasions over both knees, a bruise in the region of the left breast, and minor cuts and abrasions on the face. There was also a deep cut on back of skull which was sutured following the reduction of her hip. Patient was placed on a table and gas anesthesia administered. With considerable difficulty, the hip was reduced and with the leg held in as much abduction as possible and slight internal rotation, and with left leg held in maximum adduction, a double hip spica was applied. Patient was put to bed and remained quite comfortable. At the end of 6 weeks, the back half of the cast on the right leg was removed so that she could obtain knee action. It was not long before she could voluntarily flex the knee to slightly beyond  $90^{\circ}$ . At end of 8 weeks cast was removed. X-rays revealed hip still in place and the acetabulum cavity slightly deepened due to the overlap of bone from the fracture of the acetabulum and slight displacement inwardly of the acetabulum itself. This cannot be called a real intrapelvic protrusion because the amount of displacement is certainly not more than a quarter of an inch. On removal of the cast, the hip was naturally quite stiff and she spent the next 4 weeks in bed obtaining further motion. At that time there was

approximately 10° flexion deformity, motion in the hip was possible to 110° flexion, 30° abduction, and complete adduction. After 4 weeks of exercises and home massage, it seemed advisable to get the patient to walking. This she did with two crutches and she got about remarkably well. Since then she has been doing further exercises including bicycle treatment so that when last seen November 15 she could take a step or two without crutches but in so doing she had a tremendous limp. The reason for this was that she has not yet obtained full hyperextension of the hip though it is definitely better than it was. There is no pain but merely a lack of muscle control which should develop. I feel definitely that Mrs. Brittingham is eventually going to have some permanent disability.

I do not feel justified, at the present time, in stating what this will be because there is ample opportunity for considerable improvement from this stage onward. She can get about fairly well with two canes but further physiotherapy must be done on this hip before any evaluation of her disability should be made.

Miss Elizabeth Wilson was seen by me at the same time as the others on August 2. She had sustained several minor abrasions but otherwise seemed physically all right except that she was suffering from a certain amount of nervous shock. It was not necessary for her to remain in the Kent General Hospital and she was brought up to Wilmington where she spent the night. The next day she went home to Baltimore. I advised her family to go to her orthopedic surgeon in Baltimore, who had taken care of her previously when she had had an injured back. This was done as a precautionary measure in order to be perfectly sure that no harm had been done to her back. X-rays were taken by Dr. George Bennett, office 4 East Madison Street, Baltimore, and I understand that there were no signs of injury.

Sincerely yours,

IRVINE M. FLINN, JR., M. D.

Sworn and subscribed to before me this 22d day of December, 1941.

FRANCIS H. ROEMER,  
Captain, Twenty-first Coast Artillery,  
Fort Du Pont, Del.

A true copy:

ROBERT E. DELANY,  
First Lieutenant, Twenty-first Coast Artillery,  
Adjutant.

NOVEMBER 4, 1941.

STATEMENT OF HENRY L. BRITTINGHAM, 3410 RODMAN STREET NW., WASHINGTON, D. C.

With reference to accident which occurred on State highway south of Dover, Del., on Saturday, August 2, 1941, when automobile driven by Henry L. Brittingham and occupied by Henry L. Brittingham, Ruth D. Brittingham (his wife), and Elizabeth D. Wilson was run into by an Army truck.

On Saturday afternoon, August 2, 1941, I left Bethany Beach, Del., in my automobile en route to Newark, Del. I was driving; my wife, Ruth D. Brittingham, was on the front seat at my right; and my wife's niece, Elizabeth D. Wilson, was on the back seat. The weather was clear and the road dry. The trip was uneventful until we reached a point about 8 miles south of Dover, Del., on Highway No. 113. At that time I was driving approximately 45 to 50 miles per hour, in a northerly direction, on the right side of the highway. Just prior to the accident there were no cars ahead of me so I had an unobstructed view of the highway. The highway to the south was straight, but to the north of the accident there was a curve to the east so that south-bound traffic was compelled to follow this curve. As I approached this curve and when I was approximately 300 feet from the south end of the curve, I saw a truck rounding the curve, coming toward us. At this time the truck was on its proper side of the highway but, when it neared my car, it veered over to my side of the road. I blew my horn, applied the brake, and swung my car as far as I could in the time available off of the concrete, onto the gravel on the right hand side of the road. It was obvious to me that I could not avoid being hit by the truck. In 1 or 2 seconds after the truck began to veer across the road it hit my car on the left front end, knocking me unconscious. I have no further knowledge of the events which occurred until several hours later when I found myself in the Kent General Hospital.

I had both legs broken, a severe blow on the head, and many cuts, bruises, sprains, and similar injuries. My wife, Ruth D. Brittingham, had her hip dislocated and broken, and many cuts and bruises. My wife's niece, Elizabeth D. Wilson, sustained a number of minor cuts and bruises and severe shock. My automobile was demolished.

The automobile I was driving was a 1938 Chevrolet bearing District of Columbia license 52-920. I have since been advised by members of the Delaware State police who investigated the accident that the truck which hit my car was a 1941 GMC truck, U. S. A. W434381, driven by Pvt. Clifford O. Johnston, Twenty-first Coast Artillery headquarters battery, Fort Du Pont, Del., United States Government driver's permit No. 220799.

HENRY L. BRITTINGHAM.

WASHINGTON,

*District of Columbia, ss:*

Before me, the subscriber, a notary public in and for the District of Columbia, personally appeared Henry L. Brittingham and made oath in due form of law that all the matters and facts stated herein are true to the best of his knowledge and belief.

Witness my hand and seal this 5th day of November 1941.

[SEAL]

L. M. Fox, *Notary Public, D. C.*

My commission expires January 4, 1942.

FEBRUARY 3, 1942.

STATEMENT OF RUTH D. BRITTINGHAM, 3410 RODMAN STREET NW.,  
WASHINGTON, D. C.

With reference to accident which occurred on State highway south of Dover, Del. on Saturday, August 2, 1941, when automobile driven by Henry L. Brittingham and occupied by Henry L. Brittingham, Ruth D. Brittingham (his wife), and Elizabeth D. Wilson was run into by an Army truck.

On Saturday afternoon, August 2, 1941, my husband, Henry L. Brittingham, was driving my niece, Elizabeth Dashiell Wilson, and myself north along the road from Rehoboth, Del., to Newark, Del. About a quarter to 3, eastern standard time, I saw an Army truck coming around a curve, going south. My husband was well over on our side of the road. When I first saw the truck, it was on its side of the road but almost immediately I saw it move across the center of the road and head directly at us. I thought the driver must be intending to make a left-hand turn across our path, but I realized almost at once that it was coming directly at us and that a collision was inevitable. I closed my eyes as we were rammed by the truck. The front of our car was so crushed that I could not see the Army truck. I turned to open the door on my side, and a terrible pain made me know that my hip was badly hurt. Someone opened the car door, and I fell out on the ground with my back to the scene of the accident, and did not move again until an ambulance came about an hour later, and I was taken to the Kent General Hospital.

My hip was dislocated and the hip socket fractured in several places. I was put in a body cast by Dr. Irvine Flinn and for 8 weeks was in the Kent General Hospital, Dover, Del. I was then brought to my home in Washington in an ambulance and confined to a hospital bed.

It was necessary to employ a nurse and a full-time maid as I was unable to either care for myself or my home.

I have now dispensed with the full-time nurse but still find it necessary to employ the full-time maid and a nurse who comes to the house to give me massage treatments. I believe it will be necessary to continue with both of these for an indefinite time to come.

RUTH D. BRITTINGHAM.

WASHINGTON,

*District of Columbia, ss:*

Before me the subscriber, a notary public in and for the District of Columbia, personally appeared Ruth D. Brittingham and made oath in due form of law that all the matters and facts stated herein are true to the best of her knowledge and belief.

Witness my hand and seal this 3d day of February 1942.

[SEAL]

AILEEN KIDWELL, *Notary Public.*



DR. IRVINE M. FLINN, JR.,  
Wilmington, Del., January 22, 1942.

Mr. H. L. BRITTINGHAM,  
Union Iron Works Co.,  
Washington, D. C.

DEAR MR. BRITTINGHAM: Your letter of January 13 received. I note that you would like a full statement as regards the possible permanent extent of the injuries to you and Mrs. Brittingham received in your accident of August 2. I shall, therefore, state these in the third person.

Mr. H. L. Brittingham: Mr. Brittingham sustained injuries to both legs. On the right side, there were two fractures, one an avulsion fracture at the insertion of the adductor tendons on the internal condyle of the right knee. This has healed up completely and will present no complications. The other was a fracture of the head of the fibula which for a time due to pressure involved the peroneal nerve and caused some disturbances in sensation on the outer border of the foot. The fracture has healed completely, and the disturbed nerve sensation on the outer border of the foot is definitely lessening and will eventually cause no difficulty. Left knee, the patient here sustained a comminuted fracture of the head of the tibia with several fragments extending into the outer table of the tibia and the joint space. There was, likewise, a hemarthrosis due naturally to bleeding into the joint of such a fracture. Fracture itself has healed completely and there is good range of motion in the knee. There is, however, slight increase in mobility of the knee joint and still some evidence of hematoma over the internal condyle of the femur. Power in this extremity is, at present, 80 percent normal and indications are that the latter will in the course of 4 or 5 months become normal. There will always be, however, some increase in the mobility of this knee and it will, therefore, result in a probable 10 percent permanent disability. In addition, Mr. Brittingham sustained a head injury with a rather severe laceration of the left eye. This healed very well but for a week or 10 days Mr. Brittingham was not completely mentally alert. This has all cleared up, but it is impossible at the present time for him to do a full day's work without becoming mentally as well as physically tired. This also I believe will clear up within the next 6 months.

Mrs. H. L. Brittingham: Mrs. Brittingham sustained a very severe fracture dislocation about the right hip. This involved a dislocation of the head of the femur and a fracture of the pelvis through the acetabulum with a small piece of the posterior portion of the acetabulum which was carried with the head of the femur when it dislocated. Reduction was accomplished and union has established itself in the fracture site. It should be noted that the head of the femur sits in the acetabulum about a quarter of an inch further on this side than on the normal side and, therefore, there will very likely be some residual limitation of motion in the hip. She, at the present time, is getting around quite well with approximately 60 percent normal motion in the hip. There is, however, still marked weakness of the muscles about the hip joint and it is these that must be built up before she will be able to walk without the support of crutches or canes. The possibilities of future trouble with this hip must be considered. These are of two types. One, she may produce a considerable amount of excess callus or excessive bone production around the hip joint so that motion will be further limited by traumatic arthritis. This will naturally produce further disability. Second, in some instances following dislocation of the hip there undergoes a sterile necrosis of the head of the bone and this in turn leads to further disability and pain. It is my feeling then at this time that her disability should be reckoned on a 70-percent basis as regards her right hip. This should be subject to definite revision at a later date, but no such permanent determination should be made for a period of at least 1 year from the present date.

Sincerely yours,

IRVINE M. FLINN, JR., M. D.

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